IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

Bail Appl..No. 4940 of 2007()

CRIME NO.158/07 OF CALICUT TOWN POLICE STATION.

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PETITIONER/2ND ACCUSED

P.V.FAISAL, S/O.ABOOBACKER HAJI,
RESIDING AT PARAMBATH HOUSE,
KARUVISSERY P.O., CALICUT - 10.

BY ADV. SRI.V.V.SURENDRAN

RESPONDENTS: COMPLAINANT AND STATE

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. STATION HOUSE OFFICER,
TOWN POLICE STATION, CALICUT.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 4940 OF 2007

Dated this the 4th day of September, 2007

ORDER

The petitioner is the 2nd accused in a crime registered, inter alia, under Secs.418 and 420 of the IPC. The crux of the allegations is that the 1st accused made false representations and induced the persons to deliver a large stock of rice to him. The petitioner, it is alleged, had acted in collusion with the 1st accused.

2. The learned counsel for the petitioner submits that the petitioner – the 2nd accused, is in no way responsible for the alleged crime committed by the 1st accused. No materials whatsoever are collected or gathered to indicate the complicity of the petitioner. In these circumstances, the discretion under Sec.438 of the Cr.P.C. may be invoked to save the petitioner of the undeserved trauma of arrest and incarceration, submits the learned counsel for the petitioner.

3. The matter was heard in part earlier. The learned Public Prosecutor was requested to bring to the notice of this Court the specific circumstances, if any, to indicate, suggest and probabilise the complicity of the petitioner. Today, when the matter came up for hearing, the learned Public Prosecutor, on the basis of the report received by him, submits that, at the moment, no specific material has been placed before the Investigating Officer to indicate the complicity of the petitioner though the possibility of the police being able to collect such materials later cannot be ruled out. The learned counsel for the petitioner submits that the petitioner is willing to co-operate with the Investigator. He shall make himself available for interrogation. Appropriate directions under Sec.438 of the Cr.P.C. may be issued, it is prayed.

4. The learned Public Prosecutor does not oppose the prayer for anticipatory bail; but insists that appropriate conditions may be imposed which shall ensure the interests of a fair, efficient and expeditious investigation.

5. Having considered all the relevant inputs, I am satisfied that the directions under Sec.438 of the Cr.P.C. can be issued in

favour of the petitioner. Appropriate conditions can, of course, be imposed which shall ensure and safeguard the interests of a proper investigation.

6. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the Investigating Officer at 11 a.m. on 10/9/07.

(ii) He shall be released on regular bail on his executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(iii) He shall make himself available for interrogation before the Investigating Officer between 11 a.m. and 5 p.m. on 10/9/07, 11/9/07 and 12/9/07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iv) If the petitioner does not appear before the Investigating Officer as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if these directions were not issued at all;

(v) If the petitioner were arrested prior to his surrender

on 10/9/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the Investigating Officer on 10/9/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge